

District or City Attorney Participation in Enforcement Cases

**Date
established**

November 23, 2004

**Enclosure to
Enforcement
Letter**

Enforcement Letter ENF 04-28

Background

Recently, the California District Attorney's Association and various individual District and City Attorney Offices (DA), expressed interest in initiating criminal actions resulting from certain pesticide incidents. The various examples of cases they cited could best be described as those meeting "priority investigation" criteria in the Cooperative Agreement between the California Department of Pesticide Regulation (DPR), the California Agricultural Commissioners and Sealers Association, and the U.S. Environmental Protection Agency, Region IX (U.S. EPA); and any other cases in which the violations created an actual health or environmental hazard.

**District
Attorney
participation**

Therefore, DPR and the California Environmental Protection Agency's Office of Legal Affairs and Law Enforcement are requesting that you provide an opportunity to your DA to either participate in the investigation and/or, when an investigation is completed, to pursue a civil (using the Business and Professions Code) or criminal action against the violator(s) when there is a priority episode or priority investigation in your county.

DPR is also requesting you provide an opportunity to your DA to either participate in the investigation and/or, when an investigation is completed, to pursue a civil or criminal action against the violator(s) for non-priority episodes when the violation(s) created an actual health or environmental hazard.

**Two sample
letters**

For your convenience, DPR has developed two sample contact letters that you may wish to use to provide your DA with an opportunity to participate either early in the investigation or at its completion, or both. The attached letters use a checklist system you and/or the DA can use to check appropriate items.

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District or City Attorney Participation in Enforcement Cases, Continued

Notify DA in a timely manner

DPR recommends you contact your DA within 5 days of the issuance of the Pesticide Episode Notification Record (form PR-ENF-114) or any other cases in which the violation(s) created an actual health or environmental hazard, or within 10 days of completion of your investigation. Your DA should also be contracted at any point in the investigation when the DA deems it appropriate.

References

- Business and Professions Code section 17500, et seq.
 - Food and Agricultural Code sections 11891, 12996, 12999.6, and 13000.1
 - Cooperative Agreement between DPR, the California Agricultural Commissioners and Sealers Association, and the U.S. Environmental Protection Agency, specifically Appendix A, Priority Investigation Effects Criteria
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Questions

Contact your Enforcement Branch Liaison if you have any questions.

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District or City Attorney Participation in Enforcement Cases, Continued

Sample letter 1 – investigation notification

[Your county letterhead]

[Date]

Dear *[District or City Attorney]*:

We would like to notify you that we have already initiated an investigation of a recent pesticide episode that occurred in our county. The basic facts of the case, as we know them at this time, are noted in the attachment.

_____ This case appears to present violations of *[FAC, 3CCR, BPC, 16CCR - you add the details]*

_____ This case appears to present an opportunity for local enforcement action beyond the authority granted me to initiate an administrative civil penalty action under the authority of FAC section 12999.5, or Business and Professions Code section 8617.

_____ We believe this case may be appropriate for criminal prosecution.

_____ Please contact me as soon as possible to make arrangements to meet with me and review the information and evidence we have obtained.

[Commissioner signature block]

[Optional courtesy copy(ies): County Counsel and/or DPR Regional Office]

Please check the appropriate item listed below and send a copy of this letter back to this office.

_____ Not interested in this case at this time.

_____ Please contact this office as soon as possible to discuss this case.

We will be contacting your office to discuss possible participation in this case.

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District or City Attorney Participation in Enforcement Cases, Continued

Sample letter 2 – enforcement action notification

[Your county letterhead]

[Date]

Dear *[District or City Attorney]*:

This is a notification that we have recently completed an investigation of a pesticide episode that occurred in our county. The facts of the case, as we know them at this time, are described in the attached investigation report.

_____ This case appears to present violations of *[FAC, 3CCR, BPC, 16CCR]*

_____ This case appears to present an opportunity for local enforcement action beyond the authority granted me to initiate an administrative civil penalty action under the authority of FAC section 12999.5, or Business and Professions Code section 8617.

_____ We believe this case is appropriate for civil prosecution under Business and Professions Code section 17500 et seq.

_____ We don't believe this case is appropriate for civil prosecution.

_____ We don't believe this case is appropriate for criminal prosecution.

_____ If you have an interest in pursuing an appropriate legal action based on this investigation, please contact me as soon as possible. If you are not interested in pursuing any action, we ask that you promptly check below and send a copy of this letter back to this office.

[Commissioner signature block]

[Optional courtesy copy(ies): County Counsel and/or DPR Regional Office]

_____ **Not interested in pursuing this case.**

_____ Please contact this office as soon as possible to discuss this case.

_____ We will be contacting your office to discuss possible participation in this case.
